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GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**SUZANNE D. CASE**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ROBERT K. MASUDA**  
FIRST DEPUTY

**M. KALEO MANUEL**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the Senate Committee on  
WATER AND LAND**

**Monday, March 25, 2019  
1:15 PM  
State Capitol, Conference Room 229**

**In consideration of  
SENATE CONCURRENT RESOLUTION 40/SENATE RESOLUTION 28  
REQUESTING THE DEPARTMENT OF LAND AND NATURAL RESOURCES TO  
ACQUIRE BY EMINENT DOMAIN THE SEAWALL AND THE REAL PROPERTY  
UNDERNEATH THE SEAWALL THAT IS LOCATED ON OR NEAR THE SEAWARD  
BOUNDARIES OF PROPERTY BETWEEN 2943 KALAKAUA AVENUE AND 3019  
KALAKAUA AVENUE, OAHU, HAWAII**

Senate Concurrent Resolution (SCR) 40/Senate Resolution (SR) 28 proposes to request the Department of Land and Natural Resources (Department) to acquire by eminent domain the seawall and the real property underneath the seawall that is located on or near the seaward boundaries of property between 2943 Kalakaua Avenue and 3019 Kalakaua Avenue. **The Department strongly opposes this measure.**

In *Gold Coast Neighborhood Association v. State of Hawaii*, 140 Hawaii 437, 403 P.3d 214, (2017), the Hawaii Supreme Court ruled, in a 3-2 decision under dissent from the Chief Justice, that by virtue of implied dedication and without any formal approval or acceptance, the State involuntarily acquired an easement over and across the seawall. However, the Court also ruled that the State does not own the seawall structure itself or the real property underneath the seawall. The Court also determined that the State has both a right and duty together with the relevant property owners for the repair and maintenance of the top surface of the seawall, over and across which the State has an easement, in accordance with equitable considerations relating to the parties' relative use, enjoyment and contributions to the seawall.

Given the Court's ruling, the Department's position is that the State's rights and obligations are limited solely to a portion of the public right of way on the top surface of the seawall. Therefore, as things presently stand, the Department may only repair the top surface of the seawall, with the costs to be shared with the relevant property owners. Currently, the repair and maintenance obligations between the Department and the relevant property owners have yet to be determined.

Alternatively, if a policy decision is made by the Department not to repair the wall, or the apportionment of repairs is deemed too costly, the Department may, in lieu of repairs, perform other safety measures such as constructing a handrail on the makai edge of the top of the seawall, or posting warning/safety signs giving notice of its condition, or closing the seawall to pedestrian traffic. *Note 33 of Majority Opinion.*

Notwithstanding the above ruling, the Department has no obligation to repair or maintain the seawall itself; to do otherwise would amount to expending public funds for private benefit. SCR 40/SR 28 proposes to grossly alter the State's legal obligation as determined by Court's ruling by imposing significant financial and legal liability on the Department that is inimical to the public interest. As noted in the Court's dissenting opinion, the seawall is a privately-owned structure that serves to protect private property and likely contributes to chronic coastal erosion in Waikiki. The Department also shares the concern expressed by the dissenting opinion that such action could ultimately lead to the State providing assistance to other private landowners statewide to repair and maintain seawalls built to protect private oceanfront development which would create an extraordinary unmanageable and unaffordable precedent in the face of rising sea level. Given the Department's longstanding position against shoreline armoring which harms beaches and adjacent properties, we would oppose such an obligation as anathema to the Department's mission to preserve and protect coastal resources held in trust by the State for the public.

Thank you for the opportunity to comment on this measure.